

617.19criwp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.617 OF 2019

Sikandar Hussain Jarda,
Age 40 years, Occu. Business,
r/o Samol Plot, Bhukhri Ni Wadi,
Vejalpur road, Godhra,
Taluka Godhra,
District Panchmahal (Gujrat)

.. Petitioner

Versus

The State of Maharashtra,
through Secretary, Home
Department, Mantralaya,
Mumba,
Police Station, Parola,
District Jalgaon

..Respondents

Mr Mujtafa Gulam Mustafa, Advocate for petitioner
Mr S.W. Mundhe, A.P.P. for respondent

CORAM : V.L. ACHLIYA, J.

DATE : 05.08.2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the petitioner and learned A.P.P., petition is heard finally at admission stage.
2. By this petition filed under Article 226 of the Constitution of India, the petitioner has claimed the following relief :

“(B) By way of appropriate writ or order, the order dated 8.10.2018 in Criminal Revision Application No.25/2018 passed by learned Additioinal Sessions Judge-1, Amalner regarding imposition of unreasonable condition of releasing vehicle of petitioner on furnishing bank guarantee in the

sum of Rs.3,00,000/- may kindly be quashed and set aside and vehicle of petitioner may kindly be released without any condition of bank guarantee."

3. Heard learned Counsel for the petitioner and learned A.P.P. for State. Perused the impugned orders.

4. Learned Counsel for the petitioner assailed the order of imposition of condition to furnish bank guarantee with contention that the condition is such that it practically amounts to refusal to handover the custody of the vehicle in terms of orders passed in the matter. It is submitted that the condition imposed by the trial Court to furnish bank guarantee in the sum of Rs.5,00,000/- and modified by the revisional Court to furnish the bank guarantee of Rs.3,00,000/- as a condition precedent to release the vehicle is onerous and unsustainable in law. It is submitted that there is absolutely no justification given in the order for imposing such drastic condition to furnish the bank guarantee besides the execution of bond to be executed by the petitioner. It is submitted that the conditions as imposed other than furnishing bank guarantee are more than sufficient to secure the compliance of the order. It is submitted that the vehicle in question was seized in the year 2017. Since then, the vehicle is lying idle and losing its utility and day-by-day the vehicle is getting damaged due to the non-use. On the basis of the instructions obtained from the petitioner, learned Counsel submits that the petitioner is ready to furnish cash security in the sum of Rs.2,00,000/- in lieu of condition to furnish bank guarantee of Rs.3,00,000/-.

5. The respondent-State has opposed the petition with contention that the condition to secure bank guarantee has been imposed in view of the peculiar facts of the case that the truck in question found to be repeatedly used in commission of offences of similar in nature. It is submitted that besides the offence in question in which the vehicle was seized, registered with police station, Parola under Section 379 read with Sec.34 of Indian Penal Code, vide C.R.No.161/2017, it was revealed that the offence of identical in nature also registered against petitioner vide C.R.No.115/2017 with police station, Chandwad, District Nasik under Section 379 read with Sec.34 of Indian Penal Code. Similarly, offence under Section 379, 465, 468, 471, 201, 114 read with Sec.34 of Indian Penal Code found to be registered against petitioner vide C.R.No.124/2017 in the State of Gujarat. It is submitted that if the interim custody of the truck in question is given to the petitioner, there is every likelihood that similar offences may be committed by adopting same modus operandi i.e. by displaying the fake registration plate on the truck to be released on interim custody.

6. I have carefully considered the submissions advanced in the light of overall facts of the case and orders passed by the Courts below. There is no dispute as to the fact that the petitioner is a registered owner of the vehicle in question i.e. the truck bearing registration no.GJ-05-AU-5484 seized in connection with offence under Section 379 of Indian Penal Code vide C.R.No.161/2017 registered with police station, Parola. The vehicle in question appears to be seized in the month of November 2017. The application seeking interim custody of the vehicle, as contemplated under Section 451 of

Cr.P.C. was presented on 16.7.2018. By order dated 20.8.2018 passed in the case, learned Judicial Magistrate, First Class, Parola allowed the application after hearing the respondent. The application was opposed by the respondent by making similar contentions, as raised before the Court. On due regard to the facts of the case and the law laid down by the Apex Court in the matter of **Sunderbhai Ambalal Desai & another Vs. State of Gujarat**, reported in **AIR 2003 SC 638**, the learned Judicial Magistrate, First Class, Parola allowed the application on certain conditions. The release of the vehicle was ordered with condition to furnish the indemnity bond in the sum of Rs.12 lakhs as well as bank guarantee in the sum of Rs.5 lakhs. It is observed in the order passed by trial Court that in the facts and circumstances of the case, it is necessary to impose the condition to furnish the bank guarantee in the sum of Rs.4,00,000/-. However, in the operative part of the order, the Court has imposed condition to furnish bank guarantee in the sum of Rs.5,00,000/-. The operative part of the order reads as under :

2. A Truck bearing registration No.GJ-05/AU-5484 seized by police station, Parola, in Crime No.161/2017 be released in favour of the applicant Sikandar Hussain Jarda on his furnishing of bank guarantee in the sum of Rs.5,00,000/- and on execution of the indemnity bond of Rs.12,00,000/- (Rs.Twelve lakh only) by him on the following conditions :-

(a) That the said vehicle be kept as it is and it's nature should not be changed in any way.

(b) That the same should not be sold or alienated in any other way till conclusion of trial in Cri. No.161/2017 registered with police station, Parole & Crime No.124/2017 registered with Police Station, Dabhoi, District Vadodara in Gujrat State.

(c) That the same shall be produced before this Court as well as the Court of Judicial Magistrate, Dabhoi dealing with Crime number 121/2017 registered with police station, Dabhoi, District Vadodara in Gujrat State as and when directed by the Court.

(d) That the applicant shall provide the necessary documents in respect of the said seized vehicle to the Investigating Officer.

(e) Investigating Officer to take two photographs of the said vehicle from front and back view, at the expense of applicant and get it attested by taking signature of the applicant thereon and submit to this Court.

(f) Investigating Officer to prepare detailed panchnama of present condition of the said vehicle and submit to this Court.

7. While passing the order, the Court has taken note of the fact that the truck in question is seized in the year 2017 and lying idle. It is also noted that if the vehicle remained unused for a long time, it will get junked and the engine will also get damaged. It is further observed that substantial space of the police station is occupied by vehicle. The Court also noted that if it is kept for a long time in an open place, it will undergo the process of decay and result into scrap value, if custody is not handed over to the petitioner. Thus, the order

passed by the trial Court reflects that the condition to impose the bank guarantee has been imposed in view of the peculiar facts that the offences of similar in nature found to be registered with police station, Chandwad and in Gujarat State.

8. The revisional Court vide order dated 8.10.2018 passed in Criminal Revision Application No.25/2018, modified the condition in respect of bank guarantee and reduced the amount from Rs.5,00,000/- to Rs.3,00,000/- lakhs. While deciding the revision petition, the revisional Court has considered the decision of the Gujarat High Court in the matter of **Sorabkhan Ganbhai Nagori Vs. State of Gujarat** wherein the Division Bench of High Court has held that the condition to release the property should not be onerous and such in nature so as to decline the relief granted in favour of such person. While passing the order, the revisional Court has taken into consideration the fact that the condition imposed by the trial Court as onerous and resulted into situation wherein though order passed in favour of applicant but he could not avail the order that passed in his favour. In paragraph 10, the Court has noted as under :-

“10. In view of the above said facts, I am of the view that the amount of bank guarantee ordered to be furnished by the learned trial Court can be reduced to the tune of Rs.3 lakh so that the petitioner would be in a position to comply the same and he would enjoy the benefit of the order. In view of the above said facts, I think that it would be necessary to interfere in the order passed by the learned trial court only in respect of furnishing the bank guarantee to the tune of Rs. Lakh. So far as the other conditions are

concerned, the petitioner is also having no grudge about them.”

9. In my view, the condition imposed by the Courts below to furnish the bank guarantee is onerous condition and resulted into denying the relief granted in favour of the petitioner. If we consider the overall facts of the case, then the vehicle in question is not the stolen property. The case of the prosecution against the accused in the case including the petitioner is that the vehicle in question was used for committing the theft of the goods carried in the vehicle by displaying fake number plate. No doubt, the accused is facing cases more than one of similar in nature. But the imposition of such condition to furnish bank guarantee no way act as deterrence in commission of offence similar in nature.

10. If we consider the overall scope and object of Section 451 of Cr.P.C., then the provision is primarily deal with grant of interim custody and disposal of property pending enquiry or trial. The orders to be passed in exercise of powers conferred under Section 451 of Cr.P.C. are in the nature of temporary handing over of custody of the property seized during the investigation to the proper person during the course of investigation or the trial. The purpose to be achieved in exercise of powers under Section 451 of Cr.P.C. is to preserve the property pending investigation/trial. Although the nature of relief to be granted is discretionary in nature, but such discretion cannot be exercised in arbitrary manner. The Court dealing with application under Section 451 of Cr.P.C. is expected to exercise the judicial

discretion vested on the sound principles of law and ensure that the orders to be passed must be in furtherance of scope and ambit of Section 451 of Cr.P.C. The orders to be passed being in nature of temporary arrangement to preserve the property seized during the course of trial, the conditions to be imposed should not be onerous and of nature to make it impossible for the person to comply the same.

11. In my view, the condition imposed to furnish the bank guarantee by the trial Court and confirmed by the revisional Court is onerous condition. The condition imposed made the order virtually practically unimplementable. The fact that the order passed in favour of the petitioner could not be implemented for a period of more than one year from the date of passing of the order itself sufficient to infer that the condition imposed is onerous and unimplementable. The concern expressed by the prosecution that vehicle may be used in commission of offence of similar in nature could have been dealt by imposing the additional condition and providing for consequences in the event the vehicle is found to be again used in commission of offences of similar in nature. The vehicle is lying in the police station for more than eighteen months. If the interim custody of the vehicle is not handed over to the petitioner, there is every likelihood that the vehicle in question may turn into scrap value. Keeping in mind the law laid down by the Apex Court in the matter of **Sunderbhai Ambalal Desai & another Vs. State of Gujarat** (supra), the interim custody of the vehicle deserves to be given to its owner. Since the petitioner has offered to furnish cash security in lieu of bank

guarantee, same deserves to be accepted and order to be modified accordingly.

12. In view of above, the petition is partly allowed. The condition imposed by the trial Court as well as the revisional Court to furnish bank guarantee as a precondition for release of vehicle is modified. Instead of furnishing bank guarantee, the petitioner is permitted to furnish the cash security in the sum of Rs.2,00,000/- as a precondition for release of vehicle besides the execution of the bond in the sum of Rs.12 lakhs, as ordered by the trial Court. In addition to furnishing of cash security, the petitioner shall file undertaking before the trial Court that he shall not use the vehicle for commission of offences of similar in nature and in case same is found to be used in commission of offences of similar in nature, the amount of cash security furnished by the petitioner, same shall be forfeited to the State Government. The undertaking to be filed also include the commitment that petitioner shall not create third party interest in respect of the vehicle till decision of the case. Except the modification of the condition of furnishing bank guarantee, all other conditions imposed by the trial Court to be complied by the petitioner for seeking interim custody of the vehicle.

13. The trial Court is directed that the order passed in the matter be notified to Regional Transport Officer, Godhra, Panchmahal (Gujrat) with specific direction that no request for transfer of ownership of

vehicle to be accepted on the part of petitioner without seeking prior permission from the Court of Judicial Magistrate, First Class, Parola.

14. Rule made absolute in above terms.

(V.L. ACHLIYA)
JUDGE

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